

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Matthew P. Chant *et al*

Application 10/789,574
Technology Center 2400

DECISION ON PETITION

This is a decision on the “Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b),” filed September 27, 2010 (“Petition to Revive”).

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On May 8, 2009, Appellants filed an Appeal Brief.
2. On August 11, 2009, the Primary Examiner issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellants a period of one month within which to file a corrected brief, i.e., until September 11, 2009.
3. On April 21, 2010, having received no response to the Notification of Non-Compliant Appeal Brief of August 11, 2009, the Primary Examiner issued a Notice of Abandonment.

4. On September 27, 2010, Appellants filed the present Petition and an Appeal Brief.

5. In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

(b) *Unintentional*. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

6. The Petition to Revive was accompanied by:

- (a) an Appeal Brief;
- (b) the Petition fee; and
- (c) A statement that “The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.”

7. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.

8. Since the application was filed after June 8, 1995, on February 27, 2004, no terminal disclaimer is required.

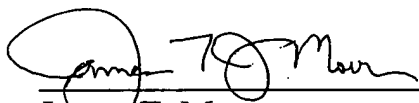
9. A review of the Appeal Brief filed on September 27, 2010 indicates that it is compliance with 37 C.F.R. § 41.37.

DISCUSSION

As indicated above, Appellants have complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

DECISION

In view of the foregoing, the Petition to Revive is GRANTED and the Appeal Brief of September 27, 2010 will be returned to the Examiner for preparation of an Examiner's Answer.



James T. Moore

Acting Chief Administrative Patent Judge

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